

E5.27 Environmental Justice

E5.27.1 Impacts to Native American Tribes

Comments: 002-000001; 052-000003; 132-000003; 136-000007

Several commenters stated that it is of interest that the potentially dangerous and environmentally devastating uranium mine is proposed where the greatest danger would be posed to the nearby Native American population, which has little voice, resources to adequately evaluate risks, and little or no chance of any economic benefit. The commenters stated further that if long-term damage or danger exists, this population has limited access to media and few resources to adequately combat exploitation and depredation of its land and health. Another commenter stated that the Dewey-Burdock proposal raises essential questions of fairness about its siting and location, as the SEIS failed to consider alternative locations, but does consider instead the permanent burial of radioactive waste at a site held sacred by indigenous people.

Response: *The NRC is not responsible for siting potential ISR facilities or other licensed facilities. Private companies interested in uranium recovery identify locations for potential ISR facilities based on the presence of uranium orebodies. As described in SEIS Section 1.7.3.5, the NRC staff is consulting with Native American groups as part of the NEPA process and the NHPA Section 106 historical and cultural process for the proposed Dewey-Burdock ISR Project. As an independent regulatory agency, NRC is specifically exempted from the provisions of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." However, the NRC exercises its regulatory authority in a manner consistent with the fundamental precepts expressed in Executive Order 13175 and has adopted agency practices that ensure consultation and cooperation with Indian tribal governments. The NRC also complies with the NHPA Section 106 regulatory requirements in 36 CFR Part 800 regulations that require federal agencies to consult with federally recognized tribes before making a decision on a federal undertaking. To fulfill its obligation under NEPA and Section 106 of the NHPA, the NRC consults with tribal governments that have an interest in, or may be affected by NRC regulatory actions. Consultations include government-to-government meetings between tribal and NRC leadership and between tribal staffs and NRC staff; issues addressed include the ISR licensing process, the development of the SEIS, the identification and evaluation of places of religious and cultural significance to Indian tribes, and mitigation strategies to protect these sites under Section 106 of the NHPA.*

The SEIS used CEQ guidance to assess whether the proposed project might cause disproportionately high and adverse human health or environmental effects on minority and low-income populations, including Native American tribes (CEQ, 1997). Based on the information and the analysis of human health and environmental impacts presented in SEIS Section 4.12, NRC concludes in the SEIS that minority and low-income populations will not be subject to disproportionately high and adverse impacts from the construction, operations, and decommissioning of the proposed ISR facility and aquifer restoration at the Dewey-Burdock site. While certain Native Americans may have a heightened interest in cultural resources potentially affected by the proposed action, the impacts to Native Americans in this and other areas are not expected to be disproportionately high or adverse.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

Comment: 042-000002

The commenter noted the Northern Cheyenne Tribe is concerned that the proposed action could have significant disproportionate impact to the tribe and its members, and urged NRC to thoroughly evaluate and mitigate potential adverse impacts. The commenter pointed out that disproportionate impacts are likely because the tribe's nearby land around Bear Butte, in Meade County, South Dakota, and the burial sites for Northern Cheyenne people killed in the January 9, 1879 "outbreak" from Fort Robinson (near Chadron, Nebraska) are within the 10,580 ac in the proposed ISR project area.

Response: *The SEIS used CEQ guidance to assess whether the proposed project might cause disproportionately high and adverse human health or environmental effects on minority and low-income populations, including Native American tribes (CEQ, 1997). Based on the information and the analysis of human health and environmental impacts presented in SEIS Section 4.12, NRC concludes in the SEIS that minority and low-income populations will not be subject to disproportionately high and adverse impacts from the construction, operations, and decommissioning of the proposed ISR facility and aquifer restoration at the Dewey-Burdock site. While certain Native Americans may have a heightened interest in cultural resources potentially affected by the proposed action, the impacts to Native Americans in this and other areas are not expected to be disproportionately high or adverse.*

With regard to potential impacts on tribal land around Bear Butte, in Meade County, South Dakota, Bear Butte is located more than 100 km [62 mi] north-northeast of the proposed project site. Because of its distance from the proposed project site, no disproportionately high or adverse impacts to Native Americans residing on tribal lands around Bear Butte are expected.

With regard to impacts on burial sites for Northern Cheyenne people killed in the 1879 "outbreak" from Fort Robinson, the NRC staff offered all interested tribes the opportunity to conduct a field survey within the proposed project boundary in order to identify properties of religious and cultural significance to them (see SEIS Section 1.7.3.5). The Northern Cheyenne Tribe was one of the seven tribes that took part in this field survey. Under the terms of the survey, the participating tribes committed to submitting reports with their findings and their recommendations for avoidance or mitigation of sites. The NRC staff considered all sites identified by the Northern Cheyenne Tribe and the other tribes that participated in the survey when the staff made its cultural resource impact determination, which is found in SEIS Section 4.9.1.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

Comment: 044-000001

The commenter was concerned about environmental justice and the effects of the *in-situ* leach mining. The commenter noted that the Black Hills is sacred to Native Americans and its impact on them is a primary concern.

Response: *The SEIS used CEQ guidance to assess whether the proposed project might cause disproportionately high and adverse human health or environmental effects on minority and low-income populations, including Native American tribes (CEQ, 1997). Based on the*

information and the analysis of human health and environmental impacts presented in SEIS Section 4.12, NRC concludes in the SEIS that minority and low-income populations, including Native American tribes, will not be subject to disproportionately high and adverse impacts from the construction, operations, and decommissioning of the proposed ISR facility and aquifer restoration at the Dewey-Burdock site.

As further discussed in SEIS Section 4.12, Native American tribes in the Black Hills region believe that preserving and maintaining access to sacred lands is essential to both cultural and spiritual aspects of traditional Native American societies of the northern plains. The identification and evaluation of places of religious and cultural significance to Native American tribes within the proposed Dewey-Burdock ISR Project area is addressed through the NHPA Section 106 consultation process (see SEIS Sections 1.7.3.5 and 4.9.1). Mitigation measures to minimize adverse impacts to cultural and historic resources are being developed in consultation with the applicant, NRC, SD SHPO, ACHP, Native American tribes (tribal government or designated THPO), and other government agencies (e.g., BLM). In general, the least intrusive mitigation measures are undertaken to protect cultural and historic resources. Native American tribes typically recommend avoidance of areas of religious and cultural significance to tribes and NRC and the applicant are committed to protecting by avoidance wherever possible.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

Comment: 020-000001

The commenter stated that the project is proposed for an area that is of great cultural significance to a stakeholder group (Native American tribes) that has been notoriously excluded from government decisions. The commenter stated that the "SMALL" designation would not be supported by many of the people who live on nearby reservations and who were forced out of the sacred lands surrounding the proposed project. The commenter further stated that because of historical exclusion, it is ethically essential that the agency proactively engage in a more thorough discussion with affected groups, rather than relying on "comment periods."

Response: *The NRC recognizes the importance of its obligation to consult with Indian tribes on places of religious and cultural significance to tribes. The NRC invited and considered the comments made on this topic by tribes and the public on these places; however, our efforts extended beyond receiving and considering information during the comment period. The NRC staff consulted with 23 federally-recognized tribes since the staff began review of the proposed Dewey-Burdock ISR Project license application in 2009 (see SEIS Section 1.7.3.5). The NRC staff's outreach efforts to date are discussed in SEIS Section 1.7.3.5 and SEIS Appendix A. As part of the consultation under Section 106 of the NHPA, the staff held three face-to-face meetings and three teleconferences with tribal representatives. In April – May 2013, interested tribes conducted a month long pedestrian field survey to identify and evaluate sites and assess potential impacts to sites of religious and cultural importance. The NRC staff completed its evaluation of identified sites and assesses impacts to historic and cultural resources and documented its findings at SEIS Section 4.9.1. The NRC continues to work closely with all interested tribes in the preparation of a PA to address avoidance and mitigation measures.*

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November 2012.

Comment: 080-000003

The commenter stated that the Oglala Sioux Tribal Council has not been given sufficient time to make a proper environmental impact assessment. The commenter stated that this is a violation of human rights, personal and tribal property, and EPA regulations against South Dakota, Oglala Lakotans, and Americans by disregarding their respective rights to make decisions over their sovereign, personal, and common lands.

Response: *The Oglala Sioux Tribe submitted comments to NRC on the draft SEIS for the proposed Dewey-Burdock ISR Project on January 15, 2013 (Adams Accession No. ML13032A215; comment document number 127 in Tables E3-1 and E3-2). NRC staff reviewed and addressed fully the comments made by Oglala Sioux Tribal Council. Revisions to the SEIS were made to respond to these comments.*

Since December 2009 when the staff first visited the proposed project area to meet with federal, state, tribal, and local agencies (NRC, 2009b), the staff has extended an invitation to the Oglala Sioux Tribe in order to hear the tribe's concerns regarding the proposed project and its potential impacts to religious and cultural properties important to northern plain tribes. Over the last 3 years, the staff consulted with the Oglala Sioux Tribe as well as other northern plain tribes that are either interested in or could be affected by the proposed project. Throughout the consultation process, the staff has discussed and disseminated information concerning the staff's ongoing environmental reviews. For example, in June 2011, the staff held its first face-to-face meeting with all interested tribes, including the Oglala Sioux (see SEIS Section 1.7.3.5). At this meeting, the staff discussed (i) the NRC regulatory process, (ii) the in-situ uranium recovery process, (iii) the area where the proposed project will take place, and (iv) the results of the applicant's archeological survey. The staff also provided an opportunity for the tribes to visit the site so that they can see firsthand where the proposed facility would be built in relation to the Black Hills National Forest (BHNF). Since its first fact-to-face meeting, the staff has had numerous exchanges via letters, email, phone calls, and additional face-to-face meetings with all interested tribes, including the Oglala Sioux. During these exchanges the staff continuously sought information from the tribes that could help the staff with its environmental impact assessment, including impacts to cultural and historic resources that are important to the tribes.

The identification and evaluation of places of religious and cultural significance to Native American tribes within the proposed Dewey-Burdock ISR Project area is being addressed through the NHPA Section 106 consultation process as described in SEIS Sections 1.7.3.5 and 4.9.1. As discussed in SEIS Section 1.7.3.5, consultation involving NRC, the applicant, SD SHPO, BLM, and interested Indian tribes is being conducted to determine (i) whether cultural and historic resources of properties of religious and cultural significance significant properties are present, (ii) whether the proposed site activities will have a significant impact on these resources, and (iii) what mitigation measures can be implemented to avoid, minimize, or mitigate adverse impacts. Currently the parties are discussing development of a programmatic agreement in accordance with 36 CFR 800.14(b)(2). The agreement will outline the mitigation process for affected resources identified at the site pursuant to 36 CFR 800.8(c)(1)(v)..

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

Comments: 091-000007; 136-000007

One commenter stated that the Dewey-Burdock proposal raises many troubling implications for the burden it places on minority and low-income populations. The commenter stated that from a national perspective, the legacy of uranium mining and milling has disproportionately burdened Native American populations across the western United States, as most productive deposits were located on Native American lands. Another commenter stated that lessons learned from impacted environmental justice communities that are destined to live with the long-term impacts of air, soil, and groundwater contamination from previous uranium developments can provide NRC with guidance on future regulatory actions needed to protect the public health and safety. The commenter stated further that allowing the project proponent to heap additional adverse impacts on an area that remains subject to legacy contamination of any kind places a disproportionately adverse impact on the region's environmental justice communities.

Response: *The SEIS used CEQ guidance to assess whether the proposed project might cause disproportionately high and adverse human health or environmental effects on minority and low-income populations, including Native American tribes (CEQ, 1997). Based on the information and the analysis of human health and environmental impacts presented in SEIS Section 4.12, NRC concludes in the SEIS that minority and low-income populations, including Native American tribes, will not be subject to disproportionately high and adverse impacts from the construction, operations, and decommissioning of the proposed ISR facility and aquifer restoration at the Dewey-Burdock site.*

In 1978, Congress promulgated statutes requiring cleanup of the abandoned uranium mills and established specific roles for DOE, NRC, and EPA. Since 1978, NRC has regulated uranium recovery (milling) facilities, but the NRC does not have the authority for the regulation of abandoned uranium mine sites. Under the regulatory oversight of the NRC, the ISR and milling industry has avoided the environmental damage associated with legacy sites. NRC staff recognizes there are significant legacy issues resulting from decades of mining and milling activities from the 1940s through the 1970s when waste from uranium mines was not subject to the NRC decommissioning and reclamation requirements that are in force today. The DOE Office of Legacy Management oversees the reclamation of legacy uranium sites and DOE coordinates these activities with the EPA, BLM, and other federal and state agencies. For a more complete description of the legacy issues, see GEIS Appendix G, Section G5.17 (NRC, 2009).

No change was made to the SEIS beyond the information provided in this response.

Comments: 127-000032; 136-000007

One commenter stated that additional and serious environmental justice issues are raised by the assumption that these solid 11e.(2) byproduct materials will be sent to San Juan County, Utah. The commenter notes census data show that San Juan County, Utah is composed of 49 percent "American Indian and Native Alaska persons." The commenter also noted that "White persons not Hispanic" only comprise 44.2 percent of San Juan County's population and 29.4 percent of the county population lives below the poverty line. Another commenter noted that the SEIS mentions the possibility of transporting waste for final disposal to the White Mesa mill in Blanding, Utah. The commenter pointed out that this mill is located near a reservation and already places significant burdens and impacts upon a neighboring Native American community in one of the poorest counties in the southwest.

Response: NRC acknowledges that the applicant proposes to pursue an agreement with the White Mesa site in San Juan County, Utah, for disposal of solid byproduct material (see SEIS Section 3.13.2). NRC also acknowledges that San Juan County's population is composed of 49 percent American Indian and Native Alaska persons (USCB, 2010). The White Mesa site in Blanding, Utah is an existing conventional mill site that has a tailings disposal area licensed by the State of Utah to accept 11e.(2) byproduct wastes. The amount of solid byproduct material generated by an ISR facility, such as the proposed Dewey-Burdock ISR Project, is only a small fraction of the tailings generated and disposed of at a conventional mill site. In addition, the proposed Dewey-Burdock ISR project would be only one of many ISR projects disposing of solid byproduct material at the White Mesa site. Therefore, the addition of ISR byproduct material from the proposed Dewey-Burdock ISR Project to the White Mesa disposal site is not considered significant. For this reason, NRC does not anticipate significant environmental justice impacts to Native American populations will result from the potential disposal of solid byproduct material from the proposed project at the White Mesa site.

No change was made to the SEIS beyond the information provided in this response.

E5.27.2 Traditional Cultural Properties and Treaty Rights

Comments: 008-000007; 029-000007; 035-000001; 041-000004; 048-000006; 051-000003; 057-000002; 072-000004; 095-000001

Several commenters stated that the SEIS does not acknowledge environmental justice, cultural, and historical concerns that include Lakota treaty rights to the proposed project area and the fact that a number of Native American tribes consider the Black Hills to be sacred. One commenter stated that the Lakota claim treaty rights to the proposed project area, and they, along with the Cheyenne and other indigenous nations, consider the Black Hills to be sacred. Another commenter stated that the project is on land that, by a Supreme Court ruling, belongs to the Native Lakota and they must be given the consideration of their rightful historic and sacred regard for this land. Another commenter stated that the region's history, with topics such as Native Americans, burial sites, and treaty lines needs to be taken into consideration and fully studied.

Response: The NRC is aware of the Sioux Nation's continued claim to the lands that were formerly part of the Great Sioux Nation established by the Fort Laramie Treaty of 1868 and the Supreme Court's 1980 ruling on the issue. NRC is also aware that longstanding treaty disputes exist between Native American tribes and the U.S. government. In its role as a regulatory agency, NRC lacks the authority to resolve these issues. These concerns are outside the Dewey-Burdock licensing review. The NRC has undertaken consultation with Native American tribes who hold the Black Hills sacred through the NHPA Section 106 process. The NRC staff has evaluated the impacts to cultural and historical resource while developing the draft SEIS and has presented its preliminary impact assessment in sections 3.9 and 4.9 of the draft SEIS. As required by 36 CFR 800, the staff has consulted and will continue to consult with interested Native American Tribes to determine whether the proposed federal undertaking action will have an impact to historic properties. Section 1.7.3.5 details the staff's interactions thus far with Native American Tribes. No changes to the SEIS are needed based on this comment.

During the Dewey-Burdock environmental review, NRC conducted NHPA consultations with state and Tribal Historic Preservation Offices to take into account whether the proposed ISL facility could affect historic properties. NRC also consulted with affected tribal governments to

consider topics of concern regarding specific ISL proposals including potentially affected places of cultural significance. As described in the historic and cultural resource sections of SEIS Chapter 3, places of cultural significance can include a variety of religious and cultural uses, including ceremonial activities, shrines, burial grounds, hunting and gathering areas, caves and shelters, springs, trails, and archaeological sites. Draft SEIS Section 3.9.3 discusses the religious and cultural importance of the Black Hills to tribal groups and their descendants, including the Sioux, Cheyenne, and Arapaho tribes.

As discussed in SEIS Section 4.12, Native American tribes in the Black Hills region believe that preserving and maintaining access to sacred lands is essential to both cultural and spiritual aspects of traditional Native American societies of the northern plains. The identification and evaluation of places of religious and cultural significance to Native American tribes within the proposed Dewey-Burdock ISR Project area was addressed through the NHPA Section 106 consultation process as described in SEIS Sections 1.7.3.5 and 4.9.1. The NHPA Section 106 review process is outlined in regulations the ACHP issued in 36 CFR Part 800. Mitigation measures to minimize adverse impacts to cultural and historic resources are being developed in consultation with the applicant, NRC, SD SHPO, ACHP, Native American tribes (tribal government or designated THPO), and other government agencies (e.g., BLM). The Section 106 consultation process provides an avenue for potentially affected Native American tribes to become consulting parties with regard to heritage interests related to the proposed project site. Potential impacts to sites of religious or cultural significance to tribes will be reduced through mitigation strategies developed during Section 106 consultations and the preparation of a programmatic agreement.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

Comments: 010-000004; 136-000005

One commenter stated that Lakota treaty rights are being ignored. Another commenter stated that the Black Hills are subject to formal treaty rights of the Lakota people under the Fort Laramie Treaty of 1868.

Response: *The NRC is aware of the Sioux Nation's continued claim to the lands that were formerly part of the Great Sioux Nation established by the Fort Laramie Treaty of 1868 and the Supreme Court's 1980 ruling on the issue. NRC is also aware that longstanding treaty disputes exist between Native American tribes and the U.S. government. In its role as a regulatory agency, NRC lacks the authority to resolve these issues. These concerns are outside the Dewey-Burdock licensing review. The NRC has undertaken consultation with Native American tribes who hold the Black Hills sacred through the NHPA Section 106 process. The NRC staff evaluated the impacts to cultural and historical resource while developing the draft SEIS and has presented its preliminary impact assessment in sections 3.9 and 4.9 of the draft SEIS. As required by 36 CFR 800, the staff consulted with interested Native American Tribes to determine and assess the impact to historic properties of the proposed federal undertaking action. Section 1.7.3.5 details the staff's interactions thus far with Native American Tribes. Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November 2012.*

The NRC staff documented input from the tribes on the identification and evaluation of historic properties in the final SEIS at Section 3.9.3.2.2. NRC staff considered this tribal input in the assessment of impacts to historic and cultural resources in the final SEIS at Section 4.9.1.

Comment: 091-000011

The commenter stated that the SEIS did not discuss the cultural importance of the Black Hills to the Sioux, Cheyenne, and Arapaho Nations, or the impact of an 1868 treaty between these tribal nations and the United States on cultural, land, and water resources in the Black Hills. The commenter stated that the 1868 Fort Laramie Treaty, the United States Constitution, and principles of international law (United Nations Declaration on the Rights of Indigenous Peoples) require a free, prior, and informed consent of the tribal nation signatories to the 1868 Fort Laramie Treaty before this project can be licensed.

Response: *The NRC is aware of the Sioux Nation's continued claim to the lands that were formerly part of the Great Sioux Nation established by the Fort Laramie Treaty of 1868 and the Supreme Court's 1980 ruling on the issue. NRC is also aware that longstanding treaty disputes exist between Native American tribes and the U.S. government. In its role as a regulatory agency, NRC lacks the authority to resolve these issues and issues of indigenous peoples under international law. These concerns are outside the Dewey-Burdock licensing review. The NRC has undertaken consultation with Native American tribes who hold the Black Hills sacred through the NHPA Section 106 process. The NRC staff evaluated the impacts to cultural and historical resource while developing the draft SEIS and has presented its preliminary impact assessment in Sections 3.9 and 4.9 of the draft SEIS. As required by 36 CFR 800, the staff has consulted and will continue to consult with interested Native American Tribes to determine whether the proposed federal undertaking action will have an impact to historic properties. Section 1.7.3.5 details the staff's interactions thus far with Native American Tribes.*

During the Dewey-Burdock environmental review, NRC conducted NHPA consultations with state and Tribal Historic Preservation Offices to take into account whether the proposed ISL facility could affect historic properties. NRC also consulted with affected tribal governments to consider topics of concern regarding specific ISL proposals including potentially affected places of cultural significance. As described in the historic and cultural resource sections of SEIS Chapter 3, places of cultural significance can include a variety of religious and cultural uses including ceremonial activities, shrines, burial grounds, hunting and gathering areas, caves and shelters, springs, trails, and archaeological sites. Draft SEIS Section 3.9.3 discusses the religious and cultural importance of the Black Hills to tribal groups and their descendants, including the Sioux, Cheyenne, and Arapaho tribes.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November 2012.

Comment: 061-000020

The commenter stated that the draft SEIS grievously mischaracterizes the environmental justice impacts of the proposed project. The commenter stated that while acknowledging the sacred nature of the Black Hills to the Lakota and other Great Plains peoples, the draft SEIS places this status with historical concerns, but this concern is not historical. The commenter stated that the Black Hills are sacred to native people and is an active environmental justice issue. The commenter noted the draft SEIS states that impacts would be no different for Native Americans

than for other groups and this is patently false. The commenter stated that the violation of one's religious center—one's Jerusalem, for a comparison—is clearly a large environmental justice impact, and one that will not be experienced by non-Indian populations.

Response: *Native American tribes are subsets of the general public residing around the proposed Dewey-Burdock ISR Project site. As discussed in SEIS Section 4.12.1, all populations, regardless of their status, will be exposed to the same health and environmental effects associated with ISR activities at the proposed project site. Therefore, short-term impacts to Native American tribes will be no different from those other populations experience near in the vicinity of the proposed project area.*

As described in SEIS Section 3.9.3, Native American tribes in the Black Hills region believe that preserving and maintaining access to sacred lands is essential to both cultural and spiritual aspects of traditional Native American societies of the northern plains. The identification and evaluation of places of religious and cultural significance to Native American tribes within the proposed Dewey-Burdock ISR Project area was addressed through the NHPA Section 106 consultation process as described in SEIS Section 4.9.1. Mitigation measures to minimize adverse impacts to cultural and historic resources are being developed in consultation with the applicant, NRC, SD SHPO, ACHP, Native American tribes (tribal government or designated THPO), and other government agencies (e.g., BLM, ARC). NRC believes that the Section 106 consultation provides an appropriate avenue to identify and mitigate Native American environmental justice concerns associated with the Black Hills.

There will be no long-term environmental justice impacts following license termination. While certain Native Americans have a heightened interest in cultural resources potentially affected by the proposed action, the impacts to Native Americans in this and other areas is not expected to be disproportionately high or adverse. To the extent there might be adverse impacts to historic and cultural sites of interest to Native Americans, these impacts will be mitigated by an agreement that will formalize treatment plans during construction. If NRHP-eligible sites cannot be avoided, treatment plans will be developed. If other historic and cultural resources are encountered during the ISR lifecycle, the applicant will be required by license condition to notify appropriate authorities (NRC, 2013; License Condition 9.8).

No change was made to the SEIS beyond the information provided in this response.

Comment: 131-000002

The commenter strongly disagreed with the analysis and conclusions drawn from the environmental justice section of the draft SEIS. The commenter pointed to the statement in SEIS Section 4.12.2 that "Environmental justice impacts to Native American tribes will primarily be no different than those experienced by other populations within the vicinity of the project area." The commenter stated that limiting the analysis to populations within the vicinity of the project area flies in the face of CEQ 1997 guidance cited at the front of the section "In assessing cultural and aesthetic environmental impacts, impacts that uniquely affect geographically dislocated or dispersed minority or low-income populations or American Indian tribes are considered" (see SEIS Section 4.12). The commenter stated that the fact is, regardless of how close we live to the project area, the loss of these significant sites and the degradation of this land does affect the Standing Rock Sioux Tribe and the citizenry of the other consulting tribes uniquely and more than other populations; the Standing Rock Sioux Tribe and other Native American tribes are the ones that hold this land sacred and the proposed project threatens the

burial places of our ancestors as well as places that are fundamental to the spiritual practices that define and sustain us as people.

Response: *The SEIS used CEQ guidance to assess whether the proposed project might cause disproportionately high and adverse human health or environmental effects on minority and low-income populations, including Native American tribes (CEQ, 1997). Based on the information and the analysis of human health and environmental impacts presented in SEIS Section 4.12, NRC concludes in the SEIS that minority and low-income populations, including Native American tribes, will not be subject to disproportionately high and adverse impacts from the construction, operations, and decommissioning of the proposed ISR facility and aquifer restoration at the Dewey-Burdock site. There will be no long-term environmental justice impacts following license termination. While certain Native Americans may have a heightened interest in cultural resources potentially affected by the proposed action, the impacts to Native Americans in this and other areas is not expected to be disproportionately high or adverse. To the extent there might be adverse impacts to historic and cultural sites of interest to Native Americans, these impacts will be mitigated by an agreement that will formalize treatment plans during construction. If NRHP-eligible sites cannot be avoided, treatment plans will be developed. If other historic and cultural resources are encountered, the applicant will be required by license condition to notify appropriate authorities (NRC, 2013; License Condition 9.8).*

As described in SEIS Section 3.9.3, Native American tribes in the Black Hills region believe that preserving and maintaining access to sacred lands is essential to both cultural and spiritual aspects of traditional Native American societies of the northern plains. The identification and evaluation of places of religious and cultural significance to Native American tribes within the proposed Dewey-Burdock ISR Project area is addressed through the NHPA Section 106 consultation process as described in draft SEIS Sections 1.7.3.5 and 4.9.1. Mitigation measures to minimize adverse impacts to cultural and historic resources are being developed in consultation with the applicant, NRC, SD SHPO, ACHP, Native American tribes (tribal government or designated THPO), and other government agencies (e.g., BLM, ARC). As part of the Section 106 process and in consultation with SD SHPO, NRC identified interested and potentially affected Native American tribes that attach historical, cultural, and religious significance to the site within the proposed project area. These tribes are listed in draft SEIS Sections 1.7.3.5 and 3.9.3 and include not only tribes from South Dakota but from North Dakota, Minnesota, Montana, Wyoming, and Nebraska. Therefore, NRC has followed CEQ 1997 guidance and appropriately identified and considered geographically dislocated or dispersed American Indian tribes in assessing cultural and aesthetic environmental impacts.

Text was added to SEIS Section 1.7.3.5 to document NHPA Section 106 consultation activities since the draft SEIS was issued in November, 2012.

E5.27.3 References

36 CFR Part 800. *Code of Federal Regulations, Title 36, Parks, Forests, and Public Property, Part 800. "Protection of Historic Properties."* Washington, DC: U.S. Government Printing Office.

CEQ (Council on Environmental Quality). "Considering Cumulative Effects Under the National Environmental Policy Act." ML13343A349. Washington, DC: Executive Office of the President, CEQ. 1997.

NRC (U.S. Nuclear Regulatory Commission). "Draft License SUA-1600 for Powertech (USA), Inc." ML13318A094. Washington, DC: NRC. March 2013.

NRC. NUREG-1910, "Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities." ML091480244, ML091480188. Washington, DC: NRC. May 2009a.

NRC. "Site Visit to the Proposed Dewey-Burdock Uranium Project, Fall River and Custer Counties, South Dakota, and Meetings with Federal, State, and County Agencies, and Local Organizations, November 30–December 4, 2009." ML093631627. Washington, DC: NRC. 2009b.

USCB (U.S. Census Bureau). "State and County QuickFacts." 2010.
<<http://quickfacts.census.gov/qfd/states/49/49037.html>> (17 July 2013).

E5.28 Public and Occupational Health and Safety

Comment: 042-000008

The commenter stated that the "Fort Robinson Run," with a route directly through the project area, is in commemoration of the Northern Cheyenne outbreak from the old military fort on January 9, 1879. The commenter was concerned that the youth and others involved in the annual run would be potentially exposed to toxic materials and other hazards resulting from the permitting of the Dewey-Burdock ISR mining and processing facilities.

Response: *A schedule of the Fort Robinson Run can be viewed and downloaded at the following website: <http://yellowbirdinc.org>. The route of the Fort Robinson Run does not pass directly through the proposed Dewey-Burdock project area. Runners participating in the Fort Robinson Run pass through Hot Springs, Pringle, and Custer on State Highway 385, which is approximately 40 km [25 mi] east of the proposed project site (see SEIS Figure 3.3-1).*

The potential impacts to public health and safety from construction, operation, aquifer restoration, and decommissioning of the proposed Dewey-Burdock ISR project are discussed in SEIS Section 4.13.1. The impact analysis evaluated the potential radiological and nonradiological impacts to the public health and safety for normal and accident conditions. For example, estimates of total effective dose equivalent (TEDE) from normal operations of the proposed project indicated that the 10 CFR part 20 public dose limit of 1 mSv/yr [100 mrem/yr] would not be exceeded at the proposed project boundary (see SEIS Section 4.13.1.1.2.1). Based on its assessment, NRC determined that the potential radiological and nonradiological impacts to public health and safety will be SMALL for each phase of the ISR facility lifecycle. Therefore, the NRC staff does not expect participants of the Fort Robinson Run to be exposed to radiological or toxic materials associated with ISR activities at the proposed Dewey-Burdock ISR Project site.

No change was made to the SEIS beyond the information provided in this response.

Comment: 061-000018

The commenter stated that the draft SEIS does not estimate worker exposure to radon or other radioactive contaminants. The commenter further stated that statements are made that radon